

## Environmental Protection Agency

## § 35.935

amount of funds available from the State allotments and reallocations under § 35.910 *et seq.* Grant payments will be limited to the Federal share of allowable project costs incurred within the grant amount or any increases effected through grant amendments (see § 35.955).

### § 35.930-3 Grant term.

The grant agreement shall establish the period within which the project must be completed, in accordance with § 30.345-1 of this chapter. This time period is subject to extension for excusable delay, at the discretion of the Regional Administrator.

### § 35.930-4 Project scope.

The grant agreement must define the scope of the project for which Federal assistance is awarded under the grant. The project scope must include a step or an identified segment. Grant assistance may be awarded for a segment of step 3 treatment works construction, when that segment in and of itself does not provide for achievement of applicable effluent discharge limitations, if:

(a) The segment is to be a component of an operable treatment works which will achieve the applicable effluent discharge limitations; and

(b) A commitment for completion of the entire treatment works is submitted to the Regional Administrator and that commitment is reflected in a special condition in the grant agreement.

### § 35.930-5 Federal share.

(a) *General.* The grant shall be 75 percent of the estimated total cost of construction that the Regional Administrator approves in the grant agreement, except as otherwise provided in paragraphs (b) and (c) of this section and in §§ 35.925-15, 35.925-16, 35.925-17, 35.930-1(b), and paragraph 10 of appendix A.

(b) *Innovative and alternative technology.* In accordance with § 35.908(b), the amount of any step 2, step 3, or step 2=3 grant assistance awarded from funds allotted for fiscal years 1979, 1980, and 1981 shall be 85 percent of the estimated cost of construction for those eligible treatment works or significant portions of them that the Regional Ad-

ministrator determines meet the criteria for innovative or alternative technology in appendix E. These grants depend on the availability of funds from the reserve under § 35.915-1(b). The proportional State contribution to the non-Federal share of construction costs for 85-percent grants must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible construction costs for all treatment works which receive 75-percent grants in the State.

(c) *Modification and replacement of innovative and alternative projects.* In accordance with § 35.908(c) and procedures published by EPA, the Regional Administrator may award grant assistance to fund 100 percent of the eligible costs of the modification or replacement of any treatment works constructed with grant assistance based upon a Federal share of 85 percent under paragraph (b) of this section.

### § 35.930-6 Limitation on Federal share.

The grantee must exert its best efforts to perform the project work as specified in the grant agreement within the approved cost ceiling. If at any time the grantee believes that the costs which it expects to incur in the performance of the project will exceed or be substantially less than the previously approved estimated total project costs, the grantee must notify the Regional Administrator and the State agency promptly in writing. As soon as practicable, the grantee must give the revised estimate of total cost for the performance of the project (see § 30.900 of this subchapter). Delay in submission of the notice and excess cost information may prejudice approval of an increase in the grant amount. The United States shall not be obligated to pay for costs incurred in excess of the approved grant amount or any amendment to it until the State has approved an increase in the grant amount from available allotments under § 35.915 and the Regional Administrator has issued a written grant amendment under § 35.955.

### § 35.935 Grant conditions.

In addition to the EPA general grant conditions (subpart C and appendix A to part 30 of this subchapter), each

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treatment works grant shall be subject to the following conditions:

##### § 35.935-1 Grantee responsibilities.

(a) Review or approval of project plans and specifications by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to design, construct, operate, and maintain the treatment works described in the grant application and agreement.

(b) By its acceptance of the grant, the grantee agrees to complete the treatment works in accordance with the facilities plan, plans and specifications, and related grant documents approved by the Regional Administrator, and to maintain and operate the treatment works to meet the enforceable requirements of the Act for the design life of the treatment works. The Regional Administrator is authorized to seek specific enforcement or recovery of funds from the grantee, or to take other appropriate action (see § 35.965), if he determines that the grantee has failed to make good faith efforts to meet its obligations under the grant.

(c) The grantee agrees to pay, pursuant to section 204(a)(4) of the Act, the non-Federal costs of treatment works construction associated with the project and commits itself to complete the construction of the operable treatment works and complete waste treatment system (see definitions in § 35.905) of which the project is a part.

(d) The Regional Administrator may include special conditions in the grant or administer this subpart in the manner which he determines most appropriate to coordinate with, restate, or enforce NPDES permit terms and schedules.

##### § 35.935-2 Procurement.

The grantee and party to any sub-agreement must comply with the applicable provisions of §§ 35.935 through 35.939 with respect to procurement for step 1, 2, or 3 work. The Regional Administrator will cause appropriate review of grantee procurement to be made.

##### § 35.935-3 Property.

(a) The grantee must comply with the property provisions of § 30.810 *et seq.*

of this subchapter with respect to all property (real and personal) acquired with project funds.

(b) With respect to real property (including easements) acquired in connection with the project, whether such property is acquired with or in anticipation of EPA grant assistance or solely with funds furnished by the grantee or others:

(1) The acquisition must be conducted in accordance with part 4 of this chapter;

(2) Any displacement of a person by or as a result of any acquisition of the real property shall be conducted under the applicable provisions of part 4 of this chapter; and

(3) The grantee must obtain (before initiation of step 3 construction), and must thereafter retain, a fee simple or such estate or interest in the site of a step 3 project, and rights of access, as the Regional Administrator finds sufficient to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project. If a step 3 project serves more than one municipality, the grantee must insure that the participating municipalities have, or will have before the initiation of step 3 construction, such interests or rights in land as the Regional Administrator finds sufficient to assure their undisturbed utilization of the project site for the estimated life of the project.

(c) With respect to real property acquired with EPA grant assistance, the grantee must defer acquisition of such property until approval of the Regional Administrator is obtained under § 35.940-3.

##### § 35.935-4 Step 2+3 projects.

A grantee which has received step 2=3 grant assistance must make submittals required by § 35.920-3(c), together with approvable user charge and industrial cost recovery systems and a preliminary plan of operation. The Regional Administrator shall give written approval of these submittals before advertising for bids on the step 3 construction portion of the step 2=3